MONTANA LEGISLATIVE HISTORY

Chapter 497 1987

Bill H 322 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on ~~Judiciary~~ Fish & Game		
Hearing Date(s)	1/27	C	Hearing Date(s)	3/17	C
	~~2/10~~	C		3/26	C
	~~2/11~~	C			C
	2/17	C			C
Date Out	3-27	C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/20	INTRODUCED		
1/20	REFERRED TO STATE ADMINISTRATION		
1/30	HEARING		
2/03	COMMITTEE REPORT--BILL PASSED		
2/05	2ND READING PASSED	96	2
2/06	3RD READING PASSED	94	4
	TRANSMITTED TO SENATE		
2/10	REFERRED TO STATE ADMINISTRATION		
2/13	HEARING		
2/24	COMMITTEE REPORT--BILL CONCURRED		
3/03	2ND READING CONCURRED	50	0
3/05	3RD READING CONCURRED	46	2
	RETURNED TO HOUSE		
3/10	SIGNED BY SPEAKER		
3/10	SIGNED BY PRESIDENT		
3/11	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 76 EFFECTIVE DATE: 10/01/87		

HB 322 INTRODUCED BY EUDAILY, ET AL.
ESTABLISH DUI BLOOD ALCOHOL LEVELS/CHEMICAL TESTING FOR BOAT OPERATORS
BY REQUEST OF DEPARTMENT OF FISH, WILDLIFE, & PARKS

1/20	INTRODUCED		
1/20	REFERRED TO JUDICIARY		
1/27	HEARING		
2/02	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/06	REREFERRED TO JUDICIARY		
2/17	HEARING		
2/17	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/19	2ND READING PASSED	83	11
2/20	3RD READING PASSED	80	12
	TRANSMITTED TO SENATE		
2/21	REFERRED TO FISH & GAME		
3/17	HEARING		
3/27	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED	45	0
3/30	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/07	2ND READING AMENDMENTS CONCURRED	80	6
4/08	3RD READING AMENDMENTS CONCURRED	79	12
4/10	SIGNED BY SPEAKER		
4/10	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 497 EFFECTIVE DATE: 4/15/87		

HB 323 INTRODUCED BY KELLER, ET AL.
LIVESTOCK TRANSPORTATION THROUGH TWO CONSECUTIVELY ADJACENT COUNTIES

1/20	INTRODUCED
1/20	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
2/06	TABLED IN COMMITTEE

2

HOUSE BILL NO. 322

INTRODUCED BY EUDAILY, MERCER, ADDY

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

IN THE HOUSE

JANUARY 20, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 2, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 4, 1987	PRINTING REPORT.
FEBRUARY 5, 1987	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 6, 1987	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 17, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1987	PRINTING REPORT.
FEBRUARY 19, 1987	SECOND READING, DO PASS.
FEBRUARY 20, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 80; NOES, 12.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 21, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON FISH & GAME.
MARCH 27, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1987	SECOND READING, CONCURRED IN.
	ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS DAY.
	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 8, 1987	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.

House BILL NO. 322

INTRODUCED BY Endsley Mercer Ackley

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH BLOOD ALCOHOL STANDARDS FOR PERSONS WHO OPERATE OR ARE IN ACTUAL PHYSICAL CONTROL OF MOTORBOATS OR VESSELS OR ARE MANIPULATING WATER SKIS, SURFBOARDS, OR SIMILAR DEVICES WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTION 23-2-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-523, MCA, is amended to read:

"23-2-523. Prohibited operation and mooring -- enforcement. (1) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person may knowingly operate or ~~knowingly permit--any--person-to-operate~~ be in actual physical control of any motorboat or vessel or manipulate any water skis, surfboard, or similar device ~~or--other-contrivance~~ while ~~intoxicated-or~~ under the influence of ~~any--narcotic--drug,~~ ~~barbiturate,-or-marijuana~~ alcohol or drugs.

(3) It is unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(4) No person may operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person may make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or ski belt.

(7) No person may moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such

INTRODUCED BILL
HB-322

buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor may any person deface, remove, or destroy any such buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended."

NEW SECTION. Section 2. Blood alcohol concentration standards -- evidence admissible -- administration of tests. (1) The presumptions contained in 61-8-401(3)(a) apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of the amount of alcohol in a person's blood at the time of the act alleged and any other competent evidence bearing on the question of whether the person was under the influence of alcohol at the time of the act alleged is admissible in any criminal action or proceeding

arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-405 and the definition of blood alcohol concentration provided in 61-8-407 apply to any testing done to determine the blood alcohol concentration of a person charged with violation of 23-2-523(2).

NEW SECTION. Section 3. Rulemaking authority of the department. The department of fish, wildlife, and parks may adopt rules to implement sections 1 and 2.

NEW SECTION. Section 4. Codification instruction. Section 2 is intended to be codified as an integral part of Title 23, chapter 2, part 5, and the provisions of Title 23, chapter 2, part 5, apply to section 2.

NEW SECTION. Section 5. Effective date. This act is effective on passage and approval.

-End-

Form CS-32
Rev. 1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURREI IN AS AMENDED DATE
322	1/20/87	2/19/87 1/27/87	2/2/87			2/23/87 2/17/87					
326	1/20/87	1/27/87	2/2/87			2/2/87					
344	1/21/87	2/9/87				2/21/87					
351		2/16/87	2/23/87	tabled							
353	1/21/87	2/3/87	2/3/87	2/3/87							
354	1/21/87	2/10/87	2/19/87	tabled							
366		2/19/87				2/23/87					
367	1/21/87	2/10/87	2/10/87	2/10/87							
371	1/21/87	2/10/87	2/18/87		2/18/87						
393		2/11/87	2/18/87			2/18/87					
399		2/11/87	2/17/87	tabled							
400		2/11/87	2/17/87			2/17/87					
413		2/2/87	2/6/87	2/6/87							
414		2/19/87	2/21/87	2/21/87							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
REPORT TO THE 50TH LEGISLATIVE SESSION

January 27, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 27, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present.

HB # 291 - was transferred from Judiciary Committee to Highways Committee.

HB # 240 - Rep. Fred Thomas, District # 62, sponsor, stated this bill revises the law on insurance bad faith claims. These are claims against insurers arising out of unfair claims settlement practices, which is essentially an administrative remedy that has been on the books for many years. The Supreme Court has expanded the administrative remedy into a court created right of action called the Tort of Insurance Bad Faith. Based on a 1983 case, the court not only allows insurers to sue their own insurer for the Tort of Insurance Bad Faith but also allows an injured third party to sue the wrong doer's insurance company. Montana is one of a handful of liberal right of action states. The right of action has also substantially increased premiums to businesses and individuals across the state. Availability, affordability and fairness are the issues of this bill. Our court has swung the pendulum so far in favor of the trial lawyers that it has stacked the deck against insurers, as a result, all of us pay. This bill swings the pendulum back towards the middle. It limits the action where an insurer should be held accountable for an injury it causes to a person through highly improper conduct. This bill also encourages alternative dispute resolution; this should cut down on court congestion and unnecessary litigation processes. HB #240 moves us toward the original intent of the Unfair Claims Settlement Practices Act but courts will still be able to hear those insurance bad faith actions that in the past have given insurance companies such a black eye.

SUPPORTERS:

JAMES JONES, Attorney, Billings, Representing Montana Association of Defense Counsel stated that in 1983 the traditional system that had existed in Montana for over 100 years and 200 years in the United States was dramatically changed by a controversial and split decision of the Montana Supreme Court, titled Klout vs. Klink. In that case, the court majority said when someone claims to have been injured

is so unreasonable that it would be virtually impossible for any plaintiff to prove what is required by the bill. The plaintiff has the burden of proving his claim. The direction Montana needs to take is not to further deregulate the insurance industry but to make them comply with notions of fairness and justice.

NO MORE OPPONENTS

QUESTIONS:

REP. RAPP-SVRCEK asked Rep. Thomas how this bill would increase insurance availability to Montana consumers. Rep. Thomas answered that a wrong way of doing business will have been eliminated. Therefore, with more availability we are going to bring into the situation more competition.

REP. MERCER asked Mr. Jones why there are distinctions made between various elements that are in the Unfair Claims Settlement Practices Act. Mr. Jones stated that the bill was passed as a regulatory scheme and it was attempting to regulate general business practices. We chose four elements that go to the heart of either the first party or third party bad faith claims.

REP. MERCER asked Mr. Hoyt if this bill would be a better state of the law for a person as a broadening of the law. Mr. Hoyt answered that personally he feels that the general business practices work against the insurance industry because it is so easy to prove.

REP. THOMAS closed the hearing by stating that Montana is one of the few states that allows this unjustified right of action. The losers of this bill are insurance agents, defense attorneys, and trial lawyers. He sees as the winners of this bill the Montana insurance consumer. There should be more availability, better pricing, better market in which to buy insurance in Montana, and a continued protection against the unfair claims practice.

HOUSE BILL NO. 322, Rep. Eudaily, District #16, sponsor stated that this bill is by request of the Department of Fish, Wildlife and Parks. This is being put forward so there will be an effective statute to act under when the occasional boater and drinking problem arises. The bill established the blood alcohol standards for persons who operate or are in motor boats, vessels or are manipulating water skiis or surf boards while under the influence of alcohol or drugs. Courts and prosecutors are familiar with the term under the influence while the term intoxicated is not presently defined in the criminal law context. This is one example of the confusion which is created by the

language in existing statutes that this bill will address. A statement of intent is with this bill.

SUPPORTERS:

JIM FLYNN - on behalf of the Department of Fish, Wildlife and Parks explained that the intent of this legislation is to amend the existing statute which makes unlawful the operation of boats while under the influence of alcohol or drugs. The bill is a response to comments from local County Attorneys, many of whom feel the existing statute is poorly worded and lacking the standards necessary for effective prosecution. (Exhibit D).

NO OPPONENTS

REP. DARKO was concerned about who would be enforcing the law. Mr. Flynn answered that the wardens would be enforcing the law.

REP. GIACOMETTO questioned Rep. Eudaily regarding water skiers or surfers being intoxicated and if that was unlawful. Rep. Eudaily stated that it is present law.

REP. BULGER wondered if under the influence of means effects your ability to the slightest degree versus ability to do it safely. He asked Rep. Eudaily where this leaves us in terms of other changes we are attempting to make in the law. Rep. Eudaily referred this question to John MacMaster. He stated that it is the same standard.

REP. MERCER asked Mr. Flynn about line 21 of the bill in regard to a person knowingly operating a motor boat and wonders how a person would unknowingly operate a motor boat. Mr. Flynn referred the question to the department's staff attorney. Peter Funk responded that the insertion of that phrase before the word operate is an attempt to put forward an explicit mental state. He said there is a risk that the statute might be construed as what is known as an absolute liability offense. The intent was to eliminate any doubt as to whether or not this was a liability offense.

REP. ADDY asked Mr. Funk about Pg. 4, line 3 that says if you refuse the blood test, you will not get one, but it would be shown in court that you refused and the jury can consider that as circumstantial evidence of guilt. This was put in to make the standards of admissibility consistent with the DUI code.

REP. EUDAILY closes by stating that this bill is an attempt to improve an existing statute rather than to infer new or extensive authority on the department although it is against

Montana law to boat or water ski while intoxicated, the law lacks teeth.

HOUSE BILL NO. 326, Rep. Addy, District #94, sponsor, at request of the Department of Institutions. It clarifies a post sentencing procedure. The change in the law occurs on Pg. 3, line 10. It deals with if somebody has violated the terms of their probation or parole or suspended sentence and the court calls them back in to impose a sentence. This bill deals with credit they deserve to receive.

SUPPORTERS:

KURT CHISHOLM, Department of Institutions, supports this bill because the department has to face 25 to 30 cases a year where it is not clear whether the sentencing court intended the inmate or defendant to be credited with time served on the street while serving out the conditions of the deferred imposition of sentence or the suspended sentence. This causes much time and paperwork to get this matter clarified.

NO OPPONENTS

REP. ADDY closed the hearing.

EXECUTIVE ACTION

Action on HB #141.

REP MERCER moves DO PASS AS AMENDED. Rep. Gould moves Mr. Tippy's amendment DO PASS. Rep. Addy comments on the amendment stating it raises a question about the bill itself. If the bill is voted on, the amendment should be put on. Rep. Mercer favors the amendment. Rep. Addy stated he just really does not like the bill. Question was called by Rep. Giacometto and a voice vote was taken on the amendment. All members voted IN FAVOR of the amendment with the exception of Rep. Addy. Rep. Rapp-Svrcek moved to amend HB #141 further by deleting new subsection 5, on Pg. 6 in its entirety and delete the language on Pg. 5, lines 11 and 12 and the fees would distribute 32% into the General Fund to county and the remaining to the State Fund. Rep. Gaicometto asked Rep. Addy who pays for the substitution fee; the county or does it come out of the State Fund. Rep. Addy stated that with an administrative fee agency, it would come out of the agency's budget. The state pays the salary and the S. ct. pays for the judges travel fund. Question was called on the amendment, that should we delete subsection 5. Voice vote was taken with seven members voting IN FAVOR and nine members voting AGAINST. The motion FAILED. Question was called on the original motion. Voice vote was

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 17, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 17, 1987, at 7:00 a.m. of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Eudaily, who was excused.

ACTION ON HOUSE BILL NO. 393:

Rep. Lory moved that HB 393 DO PASS. Rep. Hannah stated that he has concerns with this bill. Rep. Daily agreed with Rep. Hannah pointing out he also has concerns with HB 393. Rep. Addy moved to amend the 12 month period by inserting 180 days subject to review by the Human Rights Commission. Rep. Mercer stated that a 12 month review rule enables the HRC to do a lot of work on the case before it goes to the District Court, but there are a number of serious problems with this bill. One year of waiting is a long time and the terminology of "failure to comply" is a very vague term. There being no set time for the hearing is another area of concern. He further stated that anyone who does not want to be in front of the Commission can frustrate the Commission, so basically its usefulness is zero. He felt that there is a problem that needs a solution and the bill could be fixed. Question was called on the amendment and a voice vote was taken. The motion CARRIED unanimously.

Rep. Mercer moved to amend on pages 1, lines 3-4, with regard to failure to comply with a lawful subpoena, also amending language on page 4, line 16. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Bulger requested that subsection (d) of the bill be fixed. Rep. Mercer moved to delete subsection (d) on page 2, lines 9-10 and on page 4, lines 22-23. He explained that it should not matter if it is a case of first impression or not because that is no fault of the parties and it should be deleted out of the bill. Question was called and voice vote was taken. The motion CARRIED unanimously.

Rep. Hannah moved to amend Subsection E, by striking the language at the bottom of the page. Rep. Mercer agreed with that motion because if someone is delaying the process subsection (a) will cover it. Question was called and a voice vote was taken. The motion CARRIED 8-6. Rep. Gould

Rep. Gould moved that HB 400. DO PASS. Rep. Bulger stated that this bill does not do a thing and he desired to table it. Rep. Gould pointed out that he would like to see the opponents of the bill be landlords for a year and then come back and see what they have to say to the Legislature.

Rep. Mercer moved to amend HB 400 stating that there is not a great housing problem in Montana. Rep. Lory stated that he has the same problem with this bill as he had with HB 399 with regard to the proper approach. This should be a joint resolution rather than putting it into statute. Rep. Bulger pointed out that if we have an argument with this it is with the law. Rep. Mercer stated that his motion is that we change the law. Rep. Addy explained that by not deciding on the issue we are deciding on this issue and we must make a decision. Rep. Mercer stated to do nothing in this area is preposterous. The Human Rights Commission recognized that this was not going to be very popular when they did not put on an effective date and if we do nothing then we are ignoring the desires of the people of Montana. He pointed out that the amendment goes a long way in addressing the problem. Question was called and a voice vote was taken. The motion CARRIED 13-3. (See Amendments Attached). Rep. Rapp-Svrcek stated that he is in total agreement with the concept of the amendment but wondered if the bill is the proper vehicle to carry it through. Question was called and a voice vote was taken. The motion CARRIED 12-2. HB 400 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO 605:

Rep. Bulger moved that HB 605 DO PASS AS AMENDED. He explained the amendments section by section. Rep. Mercer stated that he agrees with the amendments. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Bulger moved the Statement of Intent (See Attachment). A voice vote was taken and the motion CARRIED unanimously. Question was called on the bill and a voice vote was taken. The motion CARRIED unanimously. HB 605 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 322:

Rep. Eudaily moved that HB 322 DO PASS. He moved the amendments. Question was called and voice vote was taken. The motion CARRIED 14-2. (See Amendments Attached). Rep. Eudaily moved that HB 322 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 14-2, with Reps. Gould and Brown dissenting. HB 322 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 503:

STANDING COMMITTEE REPORT

February 17, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 322

XX ☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

XX ☐ as amended
☐ statement of intent attached

Chairman

1. Title, lines 6 and 7.
Strike: "OR ARE" on line 6 through "CONTROL OF" on line 7

2. Title, line 7.
Following: "MOTORBOATS"
Strike: "OR"
Strike: "SAILBOATS"
Insert: ", INCLUDING A SAILBOAT PROPELLED BY A MOTOR OF ANY KIND,"

3. Page 1, line 21.
Strike: "knowingly"
Strike: "or"

4. Page 1, lines 22 and 23.
Strike: "be in" on line 22 through "of" at beginning of line 23

5. Page 1, line 23.
Following: "motorboat"
Strike: "or"
Strike: "SAILBOAT"
Insert: ", including a sailboat propelled by a motor of any kind,"

AHB322c/JM/JM2

SECOND reading copy (YELLOW color)

CHAIRMAN--SEN. ED SMITH
NORMAL SCHEDULE==> SITE: ROOM 402 DAYS: T-T-S TIME: 1:00 P.M.
SECRETARY-MARY FLORENCE ROOT

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0064	1/21	3/05	3-5	CONCUR AS AMENDED		3-5
HANSON, MARIAN			BOW HUNTER COMPETENCY TRAINING			
HB0093	1/21	3/05	3-5	CONCUR		3-5
HANSON, MARIAN			ALLOW TAKING OF CATFISH WITH LONGBOW AND ARROW			
HB0131	1/28	3/05	3-5	CONCUR		3-5
ELLISON, ORVAL			DEPARTMENT OF FISH, WILDLIFE, AND PARKS' AUTHORITY TO SELL EXCESS FISH EGGS			
HB0152	1/28	3/19	3-19	CONCUR AS AMENDED		3-19
BARDANOUVE, FRANCIS			PROPERTY TAXATION OF LAND OWNED BY DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
HB0183	2/03	3/10	3-10	CONCUR		3-10
ELLISON, ORVAL			AUTHORITY OF FISH AND GAME COMMISSION TO SET FEES FOR CERTAIN LICENSES			
HB0210	2/03	3/10	3-10	CONCUR AS AMENDED		3-10
GRADY, ED			REQUIRE INVESTIGATION OF GAME DAMAGE COMPLAINT WITHIN 48 HOURS			
HB0211	1/29	3/12	3-12	CONCUR AS AMENDED		3-12
DEVLIN, GERRY			PROHIBIT HARASSMENT OF SPORTSMEN			
HB0266	2/04	3/12	3-12	CONCUR		3-12
REAM, BOB			AMENDMENT OF ENDANGERED SPECIES LIST			
HB0298	2/17	3/12	3-12	CONCUR		3-12
RAPP-SVRCEK, PAUL			RESTRICTIONS ON SPECIAL BIG GAME LICENSES			
HB0322	2/21	3/17	3-17	CONCUR AS AMENDED		3-26
EUDAILY, RALPH			ESTABLISH DUI BLOOD ALCOHOL LEVELS/CHEMICAL TESTING FOR BOAT OPERATORS			
HB0329	2/12	3/17	3-17	CONCUR AS AMENDED		3-26
REAM, BOB			RESTITUTION FOR ILLEGAL KILLING OF WILDLIFE			

MINUTES OF THE MEETING
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

March 17, 1987

The thirteenth meeting of the Senate Fish and Game committee was called to order at 1:00 P.M. on March 17, 1987 by Chairman Ed Smith in Room 402 of the Capitol Building.

ROLL CALL: All members were present at roll call, with the exception of Chairman Smith who was temporarily excused to present a bill in another committee. Senator Bengtson was absent.

CONSIDERATION OF HOUSE BILL 322: Representative Ralph Eudaily, House District No. 60, stated that the bill was drafted at the request of the Department of Fish, Wildlife and Parks and is an act to establish blood alcohol standards for persons who operate motorboats, including sailboats which are propelled by a motor of any kind, or are manipulating water skis, surfboards, or similar devices attached to motorboats while under the influence of alcohol or drugs. The legislation is proposed so that an effective statute is on the books when a problem arises. The present statute is confusing. The language does not utilize recognized legal concepts used in drinking related offenses. The statutes do not contain standards constituting intoxication of being under the influence. Local prosecutors have experienced significant problems in proving contested charges under present statutes. The courts and prosecutors are familar with the term "under the influence", while the term "intoxicated" is not defined in the criminal law context. The standards proposed are the same as the motor vehicle standards for DUI's.

PROPONENTS

Dick Johnson, Fish, Wildlife and Parks Department, presented written testimony. (Exhibit 1)

OPPONENTS

There were no opponents to HB 322.

QUESTIONS FROM THE COMMITTEE

Senator Yellowtail queried committee members concerning similar legislation in Judiciary Committee that may be in conflict with this legislation.

When the bill was originally submitted, the phrase, "under the influence" was defined in case law as opposed to the statutes. The Department did not put forward a bill at that time which would have included the definition of "under the influence." The Department of Justice has submiited a bill this legislative session that deals with the definition of "under the influence." The definition is to be inserted in the Motor Vehicle Codes. Although the Department does not anticipate any severe problems by not having the term defined, the statute definition would clarify the law. The other solution to the problem would be to refer to the definition adopted during this Legislative session in regards to Title 61 of the Motor Vehicle Code.

Senator Yellowtail asked for the definition adjustment to be consistant with the Motor Vehicle Code. Although it is uncertain to the outcome of the proposed legislation, the Department will put together an amendment that will reference the definition of "under the influence" with that of the definition of the Motor Vehicle Code. Then, if the legislation passes, the language would be included in HB 322. (Exhibit 2)

Representative Eudaily closed on House Bill 322, and expressed satisfaction in regards to a forthcoming amendment. It is important to keep legislation consistent.

CONSIDERATION OF HOUSE BILL 533: Representative Bud Campbell, House District No. 48, sponsor of the bill, stated that the bill is an act to reserve 25 antelope licenses for nonambulatory disabled persons. The bill was drafted because of a hunting expedition in Lewistown, MT. The hunt was not able to be completed because the clients were unable to obtain the antelope licenses. Special ramps had been constructed to accommodate the nonambulatory disabled person. The Department, according to the proposed legislation, shall reserve for applicants who are permanently physically handicapped and nonambulatory, as determined by the Department, up to 25 of the total special antelope licenses authorized for sale in the state, for use in the district designated by the Commission. If the number of valid disabled applicants exceeds the number of licenses available, the Department may hold a drawing whereby all applicants have an equal chance of being selected.

PROPONENTS

Dick Johnson, Fish, Wildlife and Parks Department, submitted written testimony to the committee. (Exhibit 3)

SENATE FISH AND GAME
EXHIBIT NO. # 1
DATE March 17, 1987
BILL NO. HB 322

HB 322
March 17, 1987

Testimony presented by Jim Flynn, Department of Fish, Wildlife and Parks

The intent of this legislation is to amend our existing statute which makes unlawful the operation of boats while under the influence of alcohol or drugs. The bill is a response to comments from local county attorneys, many of whom feel the existing statute is poorly worded and lacks the standards necessary for effective prosecution.

The legislation first changes the wording of the existing statute so that it more closely resembles the language used in the DUI statute.

The bill then adds a new section of law which will accomplish several things. It will provide for the use of the same standards regarding the phrase "under the influence" as are used in the DUI context. It also allows for the introduction into evidence of any BAC test results, as well as any other competent evidence bearing on the "under the influence" question. It further provides that if a person charged with violating this section of the law were asked to take a BAC test and refused, such refusal would be admissible evidence in any future prosecution.

Finally, the new section incorporates some provisions from the motor vehicle code which specify how, procedurally, BAC testing is to be done and adopts the motor vehicle code definition of "blood alcohol concentration".

The Department supports these changes and believes their adoption will eliminate the problems inherent in the language of the existing statute.

SENATE FISH AND GAME
EXHIBIT NO. #2
DATE March 17, 1987
BILL NO. HB 322

Amendments to HB 322
SECOND READING COPY
Second Printing, As Amended

1. Page 4, line 18.
Insert: (5) As used in 23-2-523(2), the term "under the influence" shall have the meaning provided in 61-8-401(3).

2. Page 5, line 2.
Insert: New Section. Section 5. Coordination Instruction. If House Bill 163, including the section defining the phrase "under the influence" is not passed and approved, Section 2(5) of this act is void.

MINUTES OF THE MEETING
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

March 26, 1987

The meeting of the Senate Fish and Game Committee was called to order at 12:30 P.M. on March 26, 1987 by Chairman Ed Smith in Room 325 of the Capitol Building.

ROLL CALL: All member of the committee were present at roll call.

CONSIDERATION OF HOUSE BILL 530: Representative Orval Ellison House District No. 81, sponsor of the bill, stated that the bill is an act to permit the sale of progeney raptors held for breeding purposes. The proposed bill would put Montana law in "sync" with the federal law. The raptor breeding projects are expensive and are monitered closely by the Fish, Wildlife and Parks Department.

PROPONENTS:

John Tubbs, Bozeman, MT, representing the Montana Falconers' Association, stated support of House Bill 530. Mr. Tubbs stated that the bill would bring Montana's regulations into "sync" with federal regulations on the sale and captive breeding of falcons. The federal propagation regulations were designed to encourage, captive production of raptors for conservation, recreation, scientific and breeding purposes. The legislation would increase genetic diversity in captive populations and would alleviate human pressures to wild populations of the raptors. Twenty states have adopted the proposed legislation. North Dakota is in the process of adopting said legislation at the present time. Montana would be the last state in the Northwest accepting the federal regulations. The International Association of Fish and Wildlife Agencies supports the drafted legislation. Mr. Tubbs stated the number of peregrine falcons held for breeding purposed has tripled, the number of young produced has doubled, and the number of peregrines donated for conservation has almost doubled. Commercialism would be difficult because the seamless band required for all captive birds of prey cannot be removed. The band is attached at an early age. The rules for recording when an egg is laid until it is hatched restricts the taking of birds from the wild and placed in captive breeding projects. Raptors and parts of the raptors are currently owned and controled by the federal government due to the mandate of the Manditory Bird Treaty. The project cannot be considered a privatization of wildlife. The federal government owns and controls the adult birds, the young, the eggs and the offspring whether the birds are sold or not sold. Mr. Tubbs compared the

DISPOSITION OF HOUSE BILL 211: Senator Smith stated the bill by Representative Devlin is an act to probibit harrassment of hunters and trappers. There are problems in the Eastern United States. Harassment could occur in Montana. Senator Jergeson moved the committee to recommend a BE CONCURRED IN AS AMENDED. The motion passed unanimously.

DISPOSITION OF HOUSE BILL 322: Senator Severson moved the committee recommend a BE CONCURRED IN on HB 322. The motion passed unanimously.

DISPOSITION OF HOUSE BILL 406: Senator Jergeson offered an amendment to sunset the Board of Outfitters. The sunset year would be 1991. Senator Bengtson stated that the date will be reviewed over the four year period. The motion passed unanimously.

Senator Jacobson made a motion to remove the five year experience clause. Senator Bengtson asked why five years experience is necessary. Smoke Elser stated the person serving on the Board should understand the workings of the outfitting industry. Jacobson stated that the five years experience clause is very unusual provision. The governor uses discretion in making appointments. The motion passed. Senator Anderson voted nay.

Senator Bishop made a motion to ask the committee to recommend a BE NOT CONCURRED IN. Senator Jacobson stated resistance to the motion. Senator Bengtson stated the outfitters have not had full consensus within the organization, but desire a high degree of professionalism. Senator Severson approved the four year sunset clause. Senator Smith stated that the Guides and Outfitters are mistaken in their concept that the board will resolve problems. The Board of Outfitters will be separate from the Fish, Wildlife, and Parks Department. Input and coordination will be lost between Outfitter and the Department in the quest to resolve problems and handle duties.

Senator Bengtson asked if any board had ever been dissolved. Senator Jacobson reported that the Board of Massage Therapy was the only board dissolved.

The motion by Senator Bishop to recommend a BE NOT CONCURRED IN failed. Senator Bishop voted yes.

Senator Bengtson made a motion that the committee recommend a BE CONCURRED IN. The motion passed with Senators Smith and Bishop voted no.

DISPOSITION OF HOUSE BILL 465: Senator Smith stated that the bill is an act to allow golden eagles to be captured for the

STANDING COMMITTEE REPORT

March 27, 1987 19.....

MR. PRESIDENT

We, your committee on Fish and Game

having had under consideration House Bill No. 322

Third reading copy (Blue color)

ESTABLISH DUI BLOOD ALCOHOL LEVELS/CHEMICAL TESTING FOR BOAT OPERATORS

Representative Ralph Eudaily (Senator Wm. Yellowtail)

House Bill 322

Respectfully report as follows: That ..... No.....

be amended as follows:

1. Page 4, line 13.
Insert: (5) As used in 23-2-523(2), the term "under the influence" shall have the meaning provided in 61-8-401(3).

2. Page 4, following line 24.
Insert: "NEW SECTION. Section 6. Coordination instruction. If House Bill 153, including the section defining the phrase "under the influence" is not passed and approved, section 2(5) of this act is void."
Renumber subsequent section.

Amendments to HB 322
e:\7006c

AND AS AMENDED
BE CONCURRED IN

XDO PASS

XDO NOT PASS

Senator Ed Smith Chairman.

HOUSE BILL NO. 322

INTRODUCED BY EUDAILY, MERCER, ADDY

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH BLOOD ALCOHOL STANDARDS FOR PERSONS WHO OPERATE ~~OR ARE IN ACTUAL PHYSICAL CONTROL OF~~ MOTORBOATS ~~OR VESSELS~~ SAILBOATS, INCLUDING A SAILBOAT PROPELLED BY A MOTOR OF ANY KIND, OR ARE MANIPULATING WATER SKIS, SURFBOARDS, OR SIMILAR DEVICES ATTACHED TO MOTORBOATS WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTION 23-2-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-523, MCA, is amended to read:

"23-2-523. Prohibited operation and mooring -- enforcement. (1) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person may knowingly operate ~~or knowingly permit any person to operate be in actual physical control of~~ any motorboat ~~or vessel~~ SAILBOAT, INCLUDING A SAILBOAT PROPELLED BY A MOTOR OF ANY KIND, or manipulate any water skis, surfboard, or similar device ATTACHED TO A MOTORBOAT ~~or other contrivance~~ while ~~intoxicated or~~ under the influence of ~~any narcotic drug, barbiturate, or marijuana~~ alcohol or drugs.

(3) It is unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(4) No person may operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person may make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or ski belt.

(7) No person may moor a vessel to any of the buoys or

beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor may any person deface, remove, or destroy any such buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended."

NEW SECTION. Section 2. Blood alcohol concentration standards -- evidence admissible -- administration of tests. (1) The presumptions contained in 61-8-401(3)(a) apply to any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(2) Evidence of the amount of alcohol in a person's blood at the time of the act alleged and any other competent

evidence bearing on the question of whether the person was under the influence of alcohol at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(3) If a person charged with violation of 23-2-523(2) refuses to submit to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 23-2-523(2).

(4) The provisions relating to administration of tests provided in 61-8-405 and the definition of blood alcohol concentration provided in 61-8-407 apply to any testing done to determine the blood alcohol concentration of a person charged with violation of 23-2-523(2).

(5) AS USED IN 23-2-523(2), THE TERM "UNDER THE INFLUENCE" SHALL HAVE THE MEANING PROVIDED IN 61-8-401(3).

~~NEW SECTION. Section 3. Rulemaking authority of the department. The department of fish, wildlife, and parks may adopt rules to implement sections 1 and 2.~~

NEW SECTION. Section 3. Codification instruction. Section 2 is intended to be codified as an integral part of Title 23, chapter 2, part 5, and the provisions of Title 23,

chapter 2, part 5, apply to section 2.

NEW SECTION. SECTION 4. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 163, INCLUDING THE SECTION DEFINING THE PHRASE "UNDER THE INFLUENCE", IS NOT PASSED AND APPROVED, SECTION 2(5) OF THIS ACT IS VOID.

NEW SECTION. Section 5. Effective date. This act is effective on passage and approval.

-End-